IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7978 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TAHERALI KASAMALI KHOJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7978 of 2003

MR BY MANKAD for Petitioner No. 1

MR SN SHELAT, ADVOCATE GENERAL, with Ms MAITHILI MEHTA, AGP, for Respondent Nos, 1-3

MR NIKHILESH J SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 04/08/2004

ORAL JUDGEMENT

RULE. Service of rule is waived by learned AGP Ms. Maithili Mehta for respondents Nos. 1 and 3 and by learned advocate Shri N.J. Shah for respondent No. 2. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner has been aggrieved by reconstitution of certain plots under Town Planning Scheme No. 1 of Anjar. Learned advocate Shri Mankad appearing for the petitioner has submitted that the petitioner is a tenant in respect of certain plots of land belonging to Shri Anjar Panjrapole. According to him, Shri Anjar Panjrapole is having certain lands in the city of Anjar. Their survey numbers as well as original plot numbers have been stated in Annexure I to the affidavit-in-reply filed filed by Shri Chavada, Chief Executive Officer of respondent No. 2. In lieu of the said original plots, certain final plots have been allotted to Shri Anjar Panjrapole in pursuance of the scheme.

3. The grievance of the petitioner is that before reconstitution of the final plots allotted to Shri Anjar Panjrapole, and before the draft town planning scheme had been sanctioned, no notice was given to the petitioner tenant. Moreover, a road has been carved out from the land belonging to Shri Anjar Panjrapole, which is not at all required. It has been also submitted that the petitioner is having his oil mill and he is doing his business in the name and style of Raymon Oil Mill. The petitioner would be losing his tenancy right as the land over which the petitioner is doing his business is to be allotted to somebody else in pursuance of the scheme. Moreover, according to the learned advocate, in the record of the respondent authorities, in addition to the name of Shri Anjar Panjrapole as landlord, name of the State of Gujarat has also been recorded as landlord.

4. For the aforestated reasons, it has been submitted that Town Planning Scheme No. 1, so far as it pertains to the reconstitution of plots, which were formerly known as City Survey Nos. 1607 to 1622 and 1656 to 1662 should be quashed and set aside and notices dated 30.1.2003 and 4.2.2003 issued by the respondent authorities to the landlord, Shri Anjar Panjrapole, should be quashed and set aside.

5. In pursuance of notice issued by this court, learned Advocate General Shri S.N. Shelat and learned AGP Ms. Maithili Mehta have appeared for respondents Nos. 1 and 3, whereas learned advocate Shri N.J. Shah

has appeared for respondent No. 2.

6. It has been submitted by the learned advocates appearing for the respondents that no individual notice was required to be given to the petitioner under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as 'the Act'). It has been submitted that the draft scheme as well as the preliminary scheme had been given due publicity as required under the provisions of the Act. Moreover, the tenant was aware of the fact that the plots, which were in his occupation, were to be reconstituted and, therefore, the petitioner had file his objections, copies of which have been annexed to the petition as Annexure B, C and D. Thus, the petitioner was aware about the scheme.

7. It has been submitted that a road having width of 7.5 Mts connecting the north and the south is very much required because, the said road connects the village site land of Anjar town to the ring road having width of 15 M, which encircles Anjar town.

8. It has been further submitted that if the petitioner is a tenant of Shri Anjar Panjrapole, the petitioner will have his tenancy rights transferred to the final plots, which have been allotted to Shri Anjar Panjrapole, as per the provisions of sec. 81 of the Act.

9. It has been thereafter submitted that upon perusal of the revenue record, it was found that alongwith Shri Anjar Panjrapole, the State of Gujarat was also shown as a co-owner of the land in question and, therefore, in the redistribution statement also, name of the State of Gujarat has been shown as an owner. It has been submitted that it is not for the authorities under the Act to make any change in the revenue record and as names of the two parties, namely, Shri Anjar Panjrapole and the State of Gujarat, were shown as the owners of the plots in question, the final plots have also been allotted to them.

10. Thus, it has been submitted that there is no substance in the petition and, therefore, the petition should be rejected.

11. I have heard the learned advocates and have also perused the affidavits filed in the matter and the relevant maps.

12. Upon perusal of the paper-book, it is very clear

that the petitioner was aware about the making and implementation of the scheme and he had also filed objections at different points of time. Had the petitioner been not aware about the daft town planning scheme, the petitioner would not have filed his objections. The purpose of giving notice to the concerned party is to inform the party about some event. In the instant case, due publicity, as required under the provisions of Act, was given to the draft town planning scheme, and as the petitioner had knowledge about the same, he had filed his objections. The said fact denotes that the petitioner was aware of the said fact. Moreover, no individual notice is required to be given under the provisions of the Act and, therefore, the petitioner tenant cannot expect a special notice to him.

13. Whether a particular road is required or not is to be decided by the town planners. Upon perusal of the map, it appears that the road having width of 7.5 M. connecting the ring road and the village site land is very much required because a person living in the heart of the town has to go to the ring road so as to use the same. The ring road passes through the periphery of Anjar and, therefore, the said road must be connected to all other important roads. Moreover, the question with regard to laying of roads is to be decided by experts and not by this court or by the residents of Anjar. In the circumstances, the objection with regard to laying the road cannot be considered by this court.

14. The petitioner apprehends that he would be losing his business because he will have to part with possession of the land in question. The said apprehension is not well-founded for the reason that, though the petitioner will have to part with the land occupied by him, he will have his right of tenancy in the final plots, which might be allotted to Shri Anjar Panjrapole, the petitioner's landlord. Looking to the provisions of sec. 81 of the Act, all rights and interests, which a person has in the original plot, are transferred to the final plot and, therefore, the petitioner can very well claim his right of tenancy in the final plot, which Shri Anjar Panjrapole would be allotted.

15. With regard to inclusion of the name of the government as a co-owner with Shri Anjar Panjrapole, it appears that name of the government was also in the original revenue record as one of the owners of the land in question. It is not for the authorities appointed under the Act to make any change in the revenue record. If the name of the State of Gujarat had been included as

a co-owner in the revenue record, even at the time of allotment of the final plot, State of Gujarat would remain one of the co-owners. If Shri Anjar Panjrapole, one of the co-owners, is aggrieved by inclusion of the name of the State of Gujarat in the redistribution statement, it is for Shri Anjar Panjrapole to take appropriate action for redressal of its grievance.

16. For the aforestated reasons, I do not see any substance in the petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

(A.R. Dave, J.)

(hn)